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No.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

IN RE

LYNDON H. LAROUCHE, JR.,
WILLIAM WERTZ,
EDWARD SPANNAUS,
MICHAEL BILLINGTON,
DENNIS SMALL,
PAUL GREENBERG and
JOYCE RUBINSTEIN,

Petitioners.

JOINT PETITION FOR WRITS OF HABEAS CORPUS

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QUESTIONS PRESENTED

1. Whether adequate relief is unavailable from other courts or in other forms.

2. Whether the government's intrusions upon petitioners' First Amendment rights to political expression and association exceeded the narrow parameters of permissible government activity and invalidate their prosecution and resultant confinement.

3. Whether the confinement of petitioners violates United States treaty law and the law of nations protecting the free exercise of political expression.

4. Whether petitioners' Fifth Amendment right to due process is denied by their confinement in violation of customary international law guaranteeing their right of political expression free from undue governmental interference.

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TABLE OF AUTHORITIES

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Cantwell v. Connecticut, 310 U.S. 296 (1940) 21

Charlton v. Kelly, 229 U.S. 447 (1913) 26

Daniels v. Williams, 474 U.S. 327 (1986) 29

Diggs v. Richardson, 555 F.2d 848 (D.C. Cir. 1976), *cert. denied,* 429 U.S. 835 (1976) 24

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Fernandez v. Wilkinson, 505 F.Supp. 787 (D. Kan. 1980), *aff'd on other grounds sub nom. Rodriquez-Fernandez v. Wilkinson,* 654 F.2d 1382 (10th Cir. 1981) 29

Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980) 28

Foster v. Neilson, 27 U.S. (2 Pet.) 253 (1829) 24

Healy v. James, 408 U.S. 169 (1972) 18, 23

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LaRouche v. Kelley, 522 F.Supp. 425 (S.D.N.Y. 1981) ...7, 18

LaRouche Campaign v. F.B.I., 106 F.R.D. 500 (D. Mass. 1985) 18

Larouche v. Webster, 75 Civ. 6010 (MJL) 7

Cases: Page

Murray's Lessee v. Hoboken Land and Improvement Co., 59 U.S. (18 How.) 272 (1856) 29

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958) 16, 17, 22

Oyama v. California, 332 U.S. 633 (1948) 25

Palko v. Connecticut, 302 U.S. 319 (1937) 29

People of Saipan ex rel. Guerrero v. United States Department of Interior, 502 F.2d 90 (9th Cir. 1974), *cert. denied*, 420 U.S. 1003 (1975) 26, 27

Pollard v. Roberts, 283 F.Supp. 248 (E.D. Ark.), *aff'd*, 393 U.S. 14 (1968) 18, 21, 22

Riley v. National Federation of the Blind, 487 U.S. ____ , 101 L.Ed.2d 669 (1988) 16, 21

Rochin v. California, 342 U.S. 165 (1952) 29

Rodriquez-Fernandez v. Wilkinson, 654 F.2d 1382 (10th Cir. 1981) 29

Roth v. United States, 354 U.S. 476 (1957) 16

Saia v. New York, 334 U.S. 558 (1948) 15

Schaumberg v. Citizens for a Better Environment, 444 U.S. 620 (1980) 19, 21

Sei Fujii v. California, 97 A.C.A. 154, 217 P.2d 481 (1950), *aff'd*, 38 Cal.2d 718, 242 P.2d 617 (1952) 24

Shelton v. Tucker, 364 U.S. 479 (1960) 17, 20

Sherbert v. Verner, 374 U.S. 398 (1963) 21

Spannaus v. Federal Election Commission, 641 F.Supp. 1520 (S.D.N.Y. 1986), *aff'd mem.*, 816 F.2d 670 (2d Cir. 1987) 22

The Nereide, 13 U.S. (9 Cranch) 388 (1815) 27

TABLE OF AUTHORITIES – *(Continued)*

Cases:	Page
The Paquete Habana, 175 U.S. 677 (1900)	27
Thomas v. Collins, 323 U.S. 516 (1945)	16, 21
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United States v. O'Brien, 391 U.S. 367 (1968)	17, 19
United States v. Smith, 18 U.S. (5 Wheat.) 153 (1820)	27
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Treaties: Page

United Nations Charter, Oct. 24, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (1969) ..... *passim*

Organization of American States Charter, April 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3 (*entered into force* Dec. 13, 1951) and *amended* by the Protocol of Buenos Aires, Feb. 27, 1967, T.I.A.S. No. 6847, O.A.S.T. No. 1-A, O.A.S.O.R., O.E.A/Ser. A/2, add. 2 (*entered into force* Feb. 27, 1970) 27

International Human Rights Instruments:

International Covenant On Civil And Political Rights, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (*entered into force* March 23, 1976)..... 25, 28

Universal Declaration Of Human Rights, G.A. Res. 217A (Ill), U.N. Doc. A/810 at 71 ..... 24, 25, 27, 28

American Convention On Human Rights, Nov. 22 169, O.A.S. T.S. No. 36 at 2, O.A.S. Off. Rec. OEA/Ser. L/V/II 23 doc. 21, rev. 2 (*entered into force* July 18, 1978) 28

American Declaration Of The Rights And Duties Of Man, May 2, 1948, O.A.S. Off. Rec. OEA/SER. L/V/II 23, doc. 21, rev..... 27

European Convention For The Protection Of Human Rights, Sept. 3, 1953, 213 U.N.T.S. 221..... 28

African Charter on Human and Peoples' Rights, June 27, 1981, O.A.U. Dec. CAB/LEG/67/3 rev. 5 28

Final Act, Conference On Security And Cooperation In Europe, Helsinki, August, 1975, *reprinted in* 73 U.S. State Dept. Bull. 323 (1975)..... 28

Other Authorities: Page

Address by Assistant Secretary of State for Human Rights and Humanitarian Law (March 16, 1978)..... 25, 26

Comment, *Self-Executing Treaties and the Human Rights Provisions of the United Nations Charter: A Separation of Powers Problem,* 25 Buffalo L. Rev. 773 (1976)..... 25

Cox, *Foreward: Freedom of Expression in the Burger Court,* 94 Harv. L. Rev. 1 (1980)..... 15

Declaration of Independence (U.S. 1776), *reprinted in* U.S.C.A. Const. Art. 1 at 1 (West 1987)..... 15, 16

I. Brownlie, *Principles of Public International Law* (3d ed. 1979)..... 25

M. McDougal, H. Lasswell, Lung-Chu Chen, *Human Rights and World Public Order* (1980)..... 27, 28

Memorandum for the United States as Amicus Curiae, *Filartiga v. Pena-Irala,* 630 F.2d 876 (2d Cir. 1980) . 28

Memorial of the Government of the United States, *Case Concerning United States Diplomatic and Consular Staff in Teheran (U.S. v. Iran,* 1980 I.C.J. 3), I.C.J. Pleadings 1 (1980)..... 28

Papers of the President, [1977] Pub., pp. 449-50..... 25

Proclamation No. 5357 of July 19, 1985, 3 C.F.R. 70 (1986)..... 26

Proclamation No. 5334 of April 30, 1985, 3 C.F.R. 46 (1986)..... 28

Proclamation No. 4885, 3 C.F.R. 70 (1982)..... 26

Sarosdy, *Jurisdiction Following Illegal Extraterritorial Seizure: International Human Rights Obligations as an Alternative to Constitutional Stalemate,* 54 Tex. L. Rev. 1464 (1976)..... 25

Other Authorities: Page

Senate Select Committee to Study Governmental Operations with Respect To Intelligence Activities Report, reprinted in Sen. Rep. No. 755, Vol. III, at 3, 94th Cong., 2d Sess. (1976) 5, 6, 19

U.S. Department of Justice, Criminal Division, *Federal Prosecution of Election Offenses* 52 (4th ed. Oct. 1984) 20

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Petitioners.

JOINT PETITION FOR WRITS OF HABEAS CORPUS

JURISDICTION

This Court has jurisdiction to consider this Joint Petition for Writs of Habeas Corpus pursuant to Title 28, United States Code, Sections 2241(a), 2241(c)(1) and 2241(c)(3).

CLAIM FOR RELIEF FROM UNLAWFUL IMPRISONMENT

Petitioners Lyndon H. LaRouche, Jr., William Wertz, Edward Spannaus, Michael Billington, Dennis Small, Paul Greenberg and Joyce Rubinstein are now unlawfully in custody pursuant to judgment and commitment orders entered by Chief Judge Albert V. Bryan, Jr., of the United States District Court for the Eastern District of Virginia (Ldg. at 8-14).[1]

Petitioners were convicted in the Eastern District of Virginia, Alexandria Division, after a joint trial on Indictment No. CR 88-243-A before Chief Judge Bryan and a jury, of one count

1. "Ldg." refers to the Lodging filed in support of this Joint Petition; "App." refers to the Appendix to this Joint Petition.

of conspiracy to commit mail fraud (18 U.S.C. § 371) and multiple counts of mail fraud (18 U.S.C. § 1341). Petitioner LaRouche was also convicted of one count of conspiracy to impede and impair the Internal Revenue Service (18 U.S.C. § 371).

On January 27, 1989, petitioners were sentenced by Chief Judge Bryan to terms of imprisonment ranging from fifteen to three years[2] and were remanded to custody.

Petitioners LaRouche, Wertz, Spannaus, Billington, Small and Greenberg are in the custody of respondents Roger Ray, United States Marshal for the Eastern District of Virginia, and Sheriff James Dunning, who oversees the Alexandria Detention Center in Alexandria, Virginia, where they are presently incarcerated.

Petitioner Rubinstein is in the custody of respondent Raymond Andrews, Warden of the Alderson Federal Correctional Institution in Alderson, West Virginia, where she is presently incarcerated.

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2. Petitioner Lyndon H. LaRouche, Jr., was sentenced to serve a total of fifteen (15) years. He received the maximum possible sentence of five (5) years on each of the thirteen counts on which he was convicted. The sentences on three groups of Counts, 1 through 4, 5 through 9 and 10 through 13, run concurrently within the grouping and consecutively to the other two groupings.

Petitioner William Wertz was sentenced to serve five (5) years on each of Counts 1 through 11, with the sentences on all counts running concurrently. In addition, Mr. Wertz was ordered to pay a fine of $11,000.

Petitioner Edward Spannaus was sentenced to serve five (5) years on Count 1 and each of Counts 3 through 11, with the sentences on all of those counts running concurrently. In addition, Mr. Spannaus was ordered to pay a fine of $10,000.

Petitioner Michael Billington was sentenced to serve three (3) years on each of Counts 1, 2, 4 and 5, with the sentences on all counts running concurrently. In addition, Mr. Billington was ordered to pay a fine of $8,000.

Petitioner Dennis Small was sentenced to serve three (3) years on each of Counts 1, 3, 8 and 10, with the sentences on all counts running concurrently. In addition, Mr. Small was ordered to pay a fine of $8,000.

Petitioner Paul Greenberg was sentenced to serve three (3) years on each of Counts 1, 9 and 11, with the sentences on all counts running concurrently. In addition, Mr. Greenberg was ordered to pay a fine of $6,000.

Petitioner Joyce Rubinstein was sentenced to serve three (3) years on each of Counts 1, 6 and 7, with the sentences on all counts running concurrently. In addition, Ms. Rubinstein was ordered to pay a fine of $6,000.

The acts for which petitioners have been investigated and prosecuted, as described in this petition, were acts in the exercise of petitioners' rights of political association and political expression. Petitioners' prosecution was designed and intended by the prosecuting officials to harass them and other persons working to promote their political ideas and beliefs, and to chill and suppress their exercise of federally protected rights of political association and political expression.

Petitioners' imprisonment is in violation of the First Amendment of the Constitution, the Due Process Clause of the Fifth Amendment of the Constitution, the United Nations Charter, and the principle of freedom of political expression found in customary international law.

The jurisdiction of this Court is invoked to release petitioners from the custody of respondents in violation of the Constitution, laws and treaties of the United States.

CONSTITUTIONAL AND TREATY PROVISIONS

This case involves the First and Fifth Amendments of the United States Constitution and the United Nations Charter.

STATEMENT OF THE CASE

A. PETITIONERS AND THEIR ACTIVITIES

1. The petitioners are all members of the National Caucus of Labor Committees ("NCLC"), an unincorporated political and philosophical association. The NCLC is the United States branch of the International Caucus of Labor Committees, which is a political association functioning in the United States, Western Europe, Central and South America, Canada and Asia, principally. The SDS Labor Committee was the predecessor organization to the NCLC. Since its inception, the NCLC has been engaged in the promulgation and promotion of political, social, and economic ideas.

2. NCLC members have been involved since the organization's founding in the publication and distribution of magazines, newspapers, reports, and other publications to promote and encourage the political ideas which those members support. The publications have included New Solidarity and Campaigner Magazine, and now include Executive Intelligence Review ("EIR"). Over a period of years, various members of the NCLC

have organized or become associated with entities, both corporate and non-corporate, which functioned to publish, sell, and otherwise disseminate these publications. These entities included Campaigner Publications, Inc. ("CPI"), Caucus Distributors, Inc. ("CDI"), Fusion Energy Foundation, Inc. ("FEF"), New Benjamin Franklin House Publishing Co., Inc., and Publications and General Management Co. ("PGM").

3. Petitioner LaRouche is an author, economist and co-founder of the National Caucus of Labor Committees and the U.S. Labor Party.[3] Petitioner LaRouche ran for the office of President of the United States in 1976, 1980, 1984 and 1988.

4. Petitioner William Wertz has been a member of the NCLC since 1972. From 1984 until 1989, Wertz coordinated sales and fundraising activities for the above-mentioned organizations nationwide. He recently worked as sales manager for PGM. Petitioner Wertz was a U.S. Labor Party candidate for the United States Senate from Washington in 1976 and sought the Democratic Party nomination for the United States Senate from California in 1982.

5. Petitioner Edward Spannaus has been a political associate of petitioner LaRouche since 1968, helping to found the SDS Labor Committee and, later, the NCLC. Spannaus has primarily concentrated his efforts in coordinating the legal affairs of the above-mentioned entities and the LaRouche movement. Spannaus also served as Treasurer of LaRouche's 1984 and 1988 campaigns for the Democratic Party presidential nomination.

6. Petitioner Michael Billington has been a member of the NCLC since 1972. Since 1980, Billington has worked as a political organizer, salesman and fundraiser for the LaRouche presidential election campaigns and for LaRouche-associated publications efforts.

7. Petitioner Dennis Small has been a member of the NCLC since 1971. From 1974 to the present, he has served as Latin American editor of EIR magazine.

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3. The U.S. Labor Party was a political party founded by members of the NCLC which functioned actively throughout the United States by promoting its political policies and running candidates for public office during the period from 1973 through 1979. In 1979, many of the leading members of the U.S. Labor Party joined the Democratic Party. The U.S. Labor Party became defunct as an active political organization at that point.

8. Petitioner Paul Greenberg has been a member of the NCLC since 1972. From 1980 until the conviction leading to his present incarceration, Greenberg was a political organizer, salesman and fundraiser for enterprises associated with the LaRouche movement. Greenberg was a U.S. Labor Party candidate for Congress from Iowa in 1974 and from Wisconsin in 1978.

9. Petitioner Joyce Rubinstein has been a political associate of petitioner LaRouche since 1976. Rubinstein was a political organizer from 1979 to 1987, after which she joined the economics staff of EIR News Service and served as a writer until her indictment in the Eastern District of Virginia.

B. THE HISTORY OF GOVERNMENTAL INTRUSION ON PETITIONERS' RIGHTS OF POLITICAL EXPRESSION AND ASSOCIATION

10. The government has investigated the federally protected political activities of petitioners almost continuously from in or about 1968 to 1988.

11. As early as 1968, the FBI began to conduct an investigation of the SDS Labor Committee, the forerunner of the NCLC (App. at A-87, A-116). This investigation was part of the FBI's Counterintelligence Program ("COINTELPRO"), a series of covert action programs directed against domestic groups.[4]

12. From 1969 through 1977, the FBI conducted an "internal security" investigation (later captioned "domestic security") of the NCLC and its members. This investigation was terminated without a single federal indictment, although the FBI investigated the NCLC and its members for a myriad of potential violations, including rebellion or insurrection (18 U.S.C. § 2383), seditious conspiracy (18 U.S.C. § 2384), and

4. In 1976, a bi-partisan committee of the United States Senate reported that COINTELPRO was "a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association." *Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities Report, reprinted in* Sen. Rep. No. 755, vol. III, at 3, 94th Cong., 2d Sess. (1976) [hereinafter cited as Church Committee Report]. The program's secret actions were "designed to 'disrupt' and 'neutralize' target groups and individuals." *Id.* With reference to COINTELPRO, the Senate Committee reported: "Whatever opinion one holds about the policies of the targeted groups, many of the tactics employed by the FBI were indisputably degrading to a free society." Church Committee Report, vol. II, at 10.

violation of the Internal Security Act of 1950 and the Communist Control Act of 1954 (50 U.S.C. §§ 781-798) (Ldg. at 15, 17).

13. One example of the FBI's effort to discover ways to prosecute NCLC members involved a 1975 incident in which the supervisor of the NCLC investigation at FBI headquarters called the FBI field office in New Haven seeking a prosecution of NCLC members based on a telephone conversation monitored by the FBI without legal justification. A memorandum of the supervisor's call (Ldg. at 21-22) states as follows:

> On 6/13/75, Supervisor JAMES GERBLICK, Extension 4575, from Division 5 at the Bureau, called . . . . He advised that he is the Supervisor handling the NCLC . . . .
>
> Supervisor GERBLICK stated AUSA NORRIS should be specifically asked whether possibly Title 18, Section 1510, Obstruction of Criminal Investigations, could be applicable in this instance. He further advised that the Bureau is very interested in having successful prosecution in some federal judicial district so that this matter can serve as an example for other judicial districts.
>
> He stated that in the event AUSA NORRIS is of the opinion that Section 1510 does not apply, the New Haven Office should give serious consideration to discontinuing monitoring telephone conversations since there is no legal justification for doing so.
>
> He further stated that some offices have had considerable success in having local authorities proceed under local statutes against NCLC members since many State laws and city ordinances might apply where there is no federal statute.

14. The reference to local authorities in the above-quoted memorandum refers to literally hundreds of "nuisance" arrests of NCLC members, during particularly 1975 and 1976, usually charging violations of local soliciting or traffic ordinances.[5]

15. The state and local "nuisance" arrests, coordinated by the FBI, were directed at the First Amendment activity of NCLC members, who distributed and sold political literature, and made contacts at plant gates, street corners, and shopping centers.

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5. The use of local authorities to disrupt targeted activities was a recognized COINTELPRO technique of the FBI. Church Committee Report, vol. III, at 57.

16. The FBI domestic security investigation was national in scope. As part of the "investigation," FBI agents at times engaged in efforts to prejudice local law enforcement authorities against petitioners and petitioners' organizations (Ldg. at 21-22, 114-15).

17. Petitioners sought the protection of their rights in the courts. In 1975, petitioners LaRouche and Spannaus, together with other members of the NCLC, filed a complaint alleging violations of their civil rights in the United States District Court for the Southern District of New York against various officials of the FBI and Department of Justice. That lawsuit, entitled *LaRouche v. Webster,* 75 Civ. 6010 (MJL), is still pending. In 1977, as part of that litigation, the defendants therein consented not to interfere with petitions and with normal electoral processes engaged in by NCLC and U.S. Labor Party members. *See LaRouche v. Kelley,* 522 F.Supp. 425, 430 (S.D.N.Y. 1981). The full domestic security investigation of the NCLC and its members was officially discontinued by the FBI on September 13, 1977 (Ldg. at 28, 60).

18. At an early date, the FBI was interested in the sources of income for the NCLC (Ldg. at 29-53), and took actions aimed at both uncovering the funding base for the group and interfering with that base in order to disrupt the group's activities. For example, in the 1970's the FBI gathered information about NCLC members who were thought to be contributing large sums of money to the NCLC (Ldg. at 54-56). This government focusing on financing continued from the inception of the FBI's investigation of the NCLC to the ultimate prosecution of petitioners, and was the major component of the investigation which resulted in the petitioners' indictment and conviction.

19. During the presidential campaign in 1980, the Public Integrity Section of the Justice Department initiated an FBI investigation of possible contributions by foreign nationals to the LaRouche campaign (Ldg. at 57). No indictments resulted from that investigation.

20. Petitioner LaRouche's political activities and the sources of the movement's income were the subjects of a January 12, 1983, memorandum from former FBI Director William H. Webster to Oliver Revell, Assistant Director of the FBI's Criminal Investigative Division, requesting any information on

the funding of the U.S. Labor Party and Lyndon LaRouche (Ldg. at 58). Director Webster stated that the issues had been raised at a meeting of the President's Foreign Intelligence Advisory Board ("PFIAB"):

> At the PFIAB meeting today, David Abshire raised the subject of the activities of the U.S. Labor Party and Lyndon LaRoche [sic]. . . . A number of the members present, including Edward Bennett Williams, raised the question of the sources of funding for these U.S. Labor Party activities. In view of the large amounts obviously being expended worldwide, the question was raised whether the U.S. Labor Party might be funded by hostile intelligence agencies.
>
> Can you give me an update together with any comments or observations on this matter?

21. On February 1, 1983, a staff memorandum to Revell regarding Director Webster's request reported that there was no active foreign counterintelligence or domestic security investigation of the U.S. Labor Party or LaRouche. The memorandum did refer to an open investigation of the "Lyndon R. LaRoche [sic] Group." The FBI had received a complaint of harassment by LaRouche associates from former Secretary of State Henry Kissinger which it had referred to the Justice Department. The Civil Rights Division of the Justice Department concluded that no violation of the federal civil rights statutes was revealed in the complaint. The FBI also concluded it raised no domestic intelligence concerns. However, shortly after Director Webster's inquiry of January 12, 1983, the FBI initiated an investigation of Kissinger's complaint for the Criminal Division of the Department. That criminal investigation was terminated without indictments in December 1983 (Ldg. at 59-71).

22. Government attempts to disrupt the NCLC and petitioners' political activities and cripple their fundraising reached a peak with the investigation which culminated in the Eastern District of Virginia prosecution and an earlier related prosecution in Boston.

The Boston U.S. Attorney's Office Prosecution

23. The petitioners' convictions are the result of a four-year national investigation which originated in Boston, Massachusetts, during late October, 1984. The initial targets of this

investigation were the two campaign committees of petitioner LaRouche's 1984 bid for the presidency.[6] The focus of this national Justice Department probe was allegations of credit card and loan fraud in connection with campaign fundraising.

24. On November 1, 1984, five days before Election Day, Richard Egan, a Special Agent of the FBI in Boston, telephoned First Fidelity Bank, N.A., in Newark, New Jersey, the campaign depository of TLC and IDL, and informed the bank that a grand jury subpoena had been issued for the records of the two committees. As a result of this phone call, the bank cancelled the credit card merchant accounts of the two committees and froze all funds on deposit. The bank's action prevented IDL from making payment for a nationwide election eve half-hour television broadcast by petitioner LaRouche (App. at A-133-34).

25. Similar government contacts with other banks having accounts of LaRouche-associated organizations caused seizures of funds on deposit or the closing of accounts. The government's activities with the banks fostered credit card chargebacks and created conditions where loans could not be repaid, thus enhancing the allegations in the government's own investigation.

26. On March 11, 1985, U.S. District Judge Harold Ackerman in the District of New Jersey ruled that First Fidelity Bank's seizure of campaign monies had been illegal (App. at A-128-46). The government's strategy to suppress petitioners' political expression and association, however, continued.

27. On December 27, 1985, Stephen S. Trott, the Assistant Attorney General for the Criminal Division at the Department of Justice, sent a letter to the U.S. Attorneys in Boston and five other districts with respect to the national investigation of LaRouche-associated organizations and fundraisers (Ldg. at 76).

28. On or about January 16, 1986, the FBI in Boston sent a teletype to FBI headquarters and eight FBI field offices (including Alexandria) concerning the investigation of alleged

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6. The LaRouche Campaign ("TLC") was the principal authorized campaign committee for the 1984 presidential primary election campaign of petitioner LaRouche, who sought unsuccessfully the Democratic Party's nomination for President of the United States. Independent Democrats for LaRouche ("IDL") was the principal authorized campaign committee during the period from June to November, 1984, when petitioner LaRouche held himself out as an independent candidate for President in the 1984 presidential general election.

illegal fundraising by the LaRouche campaign. The FBI teletype announced a conference to be held in Boston on February 12-14, 1986, "to share information and coordinate efforts in the investigation of the wide-spread fundraising fraud by the Lyndon LaRouche campaign organization and related entities." (Ldg. at 72-77).

29. The government's Boston "LaRouche Conference" did indeed take place as scheduled and included participants from Alexandria, Boston, Chicago, Los Angeles, Philadelphia, San Francisco, FBI Headquarters and the Department of Justice. No investigation of petitioners prior to that time had resulted in a federal indictment. One of the key objectives of the conference was to discuss the various prosecutorial theories that might be pursued in a national prosecution of the "LaRouche organizations." Among the theories discussed were mail fraud, wire fraud and tax violations (Ldg. at 78-81).

30. In March 1986, two associates of petitioners won the Democratic Party nominations for Lieutenant Governor and Secretary of State in Illinois. The elections to those offices were held in November 1986.

31. On October 6, 1986, less than one month before Election Day, the coordinated strategy by federal and state authorities to suppress petitioners' political activities resulted in a raid by 400 federal and state law enforcement officials on the political headquarters of petitioners at Leesburg, Virginia, and the seizure of approximately two million pages of documents. On the same day, a federal grand jury returned an indictment in Boston, Massachusetts, charging wire fraud, criminal contempt and conspiracy to obstruct justice against petitioner Billington and ten LaRouche associates, as well as NCLC, CPI, CDI and the two campaign committees of the 1984 LaRouche presidential campaign. The alleged fraudulent scheme was national in scope. These events on October 6 substantially disrupted the final stages of the 1986 election campaigns.

32. On December 16, 1986, the Boston grand jury returned a superseding indictment adding petitioner Spannaus and two others in the conspiracy to obstruct justice count. The superseding indictment also alleged a nationwide mail fraud scheme involving the solicitation of loans and the issuance of promissory notes.

33. On June 30, 1987, the Boston grand jury issued a second superseding indictment adding petitioner LaRouche to the conspiracy to obstruct justice count and reaffirming the national scope of the prosecution (App. at A-12-38).

34. Each of the government actions mentioned above generated substantial amounts of publicity adverse to petitioners (*See, e.g.*, Ldg. at 82-112).

35. Jury selection in Boston commenced on September 21, 1987. Trial of petitioners LaRouche and Spannaus and most of their co-defendants began on December 17, 1987, before United States District Judge Robert E. Keeton. Petitioner Billington had been severed in June 1987 and was to be tried later on the Boston federal charges. On May 4, 1988, a mistrial was declared by Judge Keeton.

36. According to the May 5, 1988 Boston Herald, the jurors polled themselves after the declaration of mistrial and "unanimously decided they'd find LaRouche, six aides, and five organizations innocent of all charges based on evidence presented since the trial began Dec. 17." One of the jurors cited government misconduct as a compelling factor in his vote. " 'It seemed some of the government's people caused the problem (for LaRouche),' said [the juror], adding that evidence showed people working on behalf of the government 'may have been involved in some of this fraud to discredit the campaign.' " (Ldg. at 113).

37. The Boston prosecutors immediately sought to schedule a new trial date. The defendants opposed a second prosecution on the grounds of governmental misconduct and double jeopardy. While Judge Keeton found that "institutional and systemic prosecutorial misconduct" occurred during the first trial, he found that the misconduct was not "deliberate" or "intentional" on the part of the individual prosecutors trying the case, *United States v. LaRouche Campaign*, 695 F.Supp. 1290, 1314-16 (D. Mass. 1988), and denied the defendants' motions.

The Alexandria U.S. Attorney's Office Investigation

38. United States Attorney Henry Hudson opened an investigation of petitioner LaRouche and associates within days of taking office as the United States Attorney for the Eastern District of Virginia in the summer of 1986.

39. Hudson and Assistant United States Attorney Kent Robinson were active planners and participants with officials of the Department of Justice and the U.S. Attorney's Office for the District of Massachusetts in the search and seizure which took place in Leesburg, Virginia, on October 6-7, 1986.

40. Robinson began presenting evidence to a federal grand jury in Alexandria, Virginia, in or about November of 1986.

41. On April 20, 1987, the government sought and obtained an *ex parte* order from the United States Bankruptcy Court for the Eastern District of Virginia, directing the appointment of interim trustees to take control of three organizations operated by associates of petitioner LaRouche. On April 21, 1987, U.S. Marshals seized and locked the offices of the three companies in Leesburg, Virginia, and in other cities. The companies affected were CPI, FEF and CDI.

42. The actions described in paragraph 41 were undertaken in connection with the filing of petitions to place the three companies in involuntary bankruptcy under Chapter 7 of the United States Bankruptcy Code. These petitions, filed by United States Attorney Hudson, represent the first time in our Nation's history that the United States government has acted as a petitioning creditor under the Bankruptcy Code. As a result of this Justice Department action, two publications with a combined circulation of over 250,000 copies per issue were shut down.

43. A trial on the propriety and sufficiency of the government's petitions was conducted in the United States Bankruptcy Court for the Eastern District of Virginia on May 4-9, 1988. That court has not yet issued a ruling.

44. Although retrial was originally set for October 1988 in the Boston case, an interlocutory appeal by defendants to the First Circuit Court of Appeals from the denial of their motion to dismiss the indictment resulted in the Boston retrial date being moved to January 3, 1989.

45. While the Boston defendants' motion to dismiss on double jeopardy grounds was pending before the First Circuit on appeal and retrial was scheduled to begin on January 3, 1989, the government saw a "window of opportunity" in the Eastern District of Virginia, where there had been two years of grand jury investigation of NCLC members. The result was the indictment on October 14, 1988, of LaRouche, Spannaus,

Billington and the other petitioners here, which the government pushed to a final verdict prior to the scheduled Boston trial date. Trial before Chief Judge Bryan in Alexandria, Virginia, commenced on November 21, 1988. On December 16, 1988, the jury returned guilty verdicts. Petitioners are currently appealing their convictions before the United States Court of Appeals for the Fourth Circuit.[7]

REASONS FOR GRANTING THE WRITS

I. ADEQUATE RELIEF IS NOT AVAILABLE FROM OTHER COURTS OR IN OTHER FORMS

Petitioners seek the immediate exercise of this court's discretionary power in light of the following exceptional circumstances:

a. Petitioners are imprisoned pursuant to the judgment and commitment orders entered by the Chief Judge of the United States District Court for the Eastern District of Virginia, the Honorable Albert V. Bryan, Jr.

b. As set forth below, petitioners' imprisonment is in violation of their rights of political expression and association guaranteed by, *inter alia*, the First Amendment of the Constitution of the United States.

c. The sentencing court has expressed clearly its rejection of any notion that petitioners' prosecution was an effort to punish or prevent the exercise of their rights of political expression and association. At the sentencing hearing on January 27, 1989, Chief Judge Bryan stated:

> [T]he defendants have repeatedly and from some of the testimony, raised this idea that this is a politically inspired, politically-motivated prosecution. I reject that as errant nonsense. The idea that this organization is a sufficient threat to anything, that would warrant the Government bringing a prosecution to silence them is, just defies human experience.

(App. at A-5.)

d. The sentencing court also viewed evidence of the magnitude of government activities directed against the finances and political activities of petitioners and their associates to be

7. Following the conviction of petitioners in the Eastern District of Virginia, the government dismissed the Boston charges, over the objections of petitioners LaRouche, Spannaus and Billington.

separate and distinct from the issues raised in the indictment. This was the basis for its granting of the government's motion *in limine* prior to trial, which sought to preclude evidence of vindictive prosecution, harassment and "financial warfare" by the government. Chief Judge Bryan's ruling limited the petitioners to showing that there were "unexpected actions" which had the effect of frustrating their expectation that loan repayments would be made (App. at A-82). The sentencing court effectively ruled that the government's intrusions on petitioners' rights of expression and association were not relevant to the propriety of their convictions on the charges in the indictment.

e. The district court's above-quoted remarks at sentencing and its decision sustaining the government's motion *in limine* makes filing this Joint Petition in that court a futile act, ineffective to test the legality of petitioners' detention. *Cf. Wilwording v. Swenson*, 404 U.S. 249 (1971) (federal habeas relief available despite failure to pursue possible state remedies which would have been an exercise in futility); *Houghton v. Scranton*, 392 U.S. 639 (1968) (exhaustion of administrative remedy not required where probably futile); *Evans v. Cunningham*, 335 F.2d 491, 492-94 (4th Cir. 1964) (exhaustion of state remedies which are futile not necessary for federal habeas consideration).

f. On January 27, 1989, Chief Judge Bryan denied each petitioner's application for bail pending appeal and remanded the petitioners into custody (App. at A-4-8). Petitioners sought immediate relief from the Fourth Circuit Court of Appeals. On January 31, 1989, their initial request was denied by Judge Butzner. The request for release pending appeal was renewed to a three-judge panel. On April 14, 1989, this request was denied without hearing or opinion (App. at A-9). Petitioners' motion for reconsideration was also denied by the Fourth Circuit panel without opinion on April 25, 1989 (App. at A-10).

g. One of the issues that is being raised on appeal, which the petitioners suggested to the Fourth Circuit warranted the granting of bond pending appeal, was the trial judge's granting of the government's motion *in limine* barring the introduction of defense evidence at trial about government activities directed against petitioners and their political associates (App. at A-77-83). In denying petitioners' motion for bond pending appeal pursuant to 18 U.S.C. § 3143(b), the Fourth Circuit apparently

concluded that this issue does not raise a "substantial question of law or fact" likely to result in reversal or an order for a new trial. This apparent conclusion on the part of the Fourth Circuit makes filing this Joint Petition before that court an equally futile act to test the legality of petitioners' detention.

h. On May 5, 1989, the petitioners renewed their request for release pending appeal in the Fourth Circuit in an application directed to Chief Justice Rehnquist of this Court. This application was denied by the Chief Justice on May 11, 1989 (App. at A-11).

i. At this time, the granting of habeas corpus relief by this Court is effectively the only means available to secure petitioners' immediate release from unlawful confinement.

II. THE GOVERNMENT'S INTRUSIONS UPON PETITIONERS' FIRST AMENDMENT RIGHTS TO POLITICAL EXPRESSION AND ASSOCIATION EXCEEDED THE NARROW PARAMETERS OF PERMISSIBLE GOVERNMENT ACTIVITY AND INVALIDATE THEIR PROSECUTION AND RESULTANT CONFINEMENT.

A. Petitioners' Rights of Political Association and Expression May Not Be Restricted By Government Action Unless the Government Meets A Rigorous Standard of Review Established By This Court For Infringements of First Amendment Rights.

It is the philosophical linkage of the First Amendment to the Declaration of Independence (U.S. 1776), *reprinted in* U.S.C.A. Const. Art. 1 at 1 (West 1987), that makes it primary[8] among the rights and provisions of the Constitution. The thesis of the Declaration of Independence was set forth in its second paragraph:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That

8. Cox, *Foreword: Freedom of Expression in the Burger Court*, 94 Harv. L. Rev. 1, 1 (1980) ("freedom of conscience and expression enjoys primacy in our scale of rights"); *Saia v. New York*, 334 U.S. 558, 562 (1948) ("freedoms of the First Amendment" occupy "a preferred position").

> whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

The First Amendment's restriction on the power of Congress to inhibit freedom of expression is an echo of specific grievances against the British crown enumerated in the Declaration of Independence, and a succinct expression of the Declaration's thesis:

> Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

The First Amendment protects political association as well as political expression. *Buckley v. Valeo*, 424 U.S. 1, 15 (1976). While these rights have never been held by this Court to be absolute, they have consistently been recognized as fundamental and at the foundation of our free society, thus permitting only the narrowest range of restriction. *Id.* at 25; *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-61 (1958); *Thomas v. Collins*, 323 U.S. 516, 530 (1945).

In *Roth v. United States*, 354 U.S. 476, 488 (1957), this Court commented on the importance of the First Amendment's protection of fundamental freedoms and the narrow parameters within which government intrusion on those rights may be permissible:

> The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests.

In *Riley v. National Federation of the Blind*, 487 U.S. ___, ___, 101 L.Ed.2d 669, 683-85 (1988), this Court reiterated the limits on permissible government intrusion when it held that "government regulation of speech must be measured in minimums, not maximums."

Governmental action which may have the effect of curtailing the freedoms of association and expression are subject to the

closest scrutiny. *Buckley v. Valeo*, 424 U.S. at 25. This is true whether the intrusion arises from direct government action or as an unintended but inevitable result of the government's conduct. *Id.* at 65. Where there are encroachments on these fundamental rights by the government's investigative or prosecutorial activities, this Court's prior decisions establish that the government's conduct must meet a rigorous standard of review: first, that the official action adversely impacting on First Amendment rights be justified by "a public interest that is 'compelling' or 'paramount,' " *Branzburg v. Hayes*, 408 U.S. 665, 680 (1972); *see also NAACP v. Alabama ex rel. Patterson*, 357 U.S. at 463, and, second, that "the infringement of protected First Amendment rights must be no broader than necessary to achieve a permissible governmental purpose. . . ." *Branzburg v. Hayes*, 408 U.S. at 699. *Accord, In re Primus*, 436 U.S. 412, 432 (1978); *Buckley v. Valeo*, 424 U.S. at 68; *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

In the context of a criminal prosecution, this Court has further delineated the conditions under which government regulation which places incidental limitations on First Amendment freedoms is justified:

> [I]f it is within the constitutional power of the Government; if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Wayte v. United States, 470 U.S. 598, 611 (1985), *quoting United States v. O'Brien*, 391 U.S. 367, 377 (1968).

Even assuming the first two *Wayte* conditions are met with regard to the government's twenty-year history of activity against petitioners, the government interests ostensibly furthered by that activity — protecting national security, maintaining the existing social and political order and preventing fraud[9] — were not, when viewed in their totality, unrelated to the suppression of free expression nor was the resultant restriction

9. Without conceding that their conduct necessitated government activity, petitioners presume that the first two listed interests were the basis for the COINTELPRO and domestic security conduct by the FBI, *see* pp. 5-7 *supra*, and that the last is asserted as the governmental interest behind the prosecution of petitioners.

on First Amendment rights the minimal limitation necessary to achieve the governmental interests. Accordingly, petitioners' confinement results from a prosecution which was constitutionally impermissible.

B. The Excessive Length And Escalating Disruptiveness Of Government Activity Directed Against Petitioners Exceeded The Parameters Within Which Government Conduct May Intrude Upon First Amendment Rights As It Demonstrates That The Governmental Interest Behind The Activity Was Not Unrelated To The Suppression Of Free Expression.

Discrete conduct, reviewed separately, may not violate the narrow parameters within which government conduct is permissible, but the mandate of the First Amendment requires the Court to review the totality of government intrusions, even subtle and indirect intrusions. The Court is "not free to disregard the practical realities." *Healy v. James*, 408 U.S. 169, 183 (1972). The freedoms of expression and association "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Bates v. Little Rock*, 361 U.S. 516, 523 (1960).

In this case, as set forth *supra* at pages 5 to 13, petitioners were subjected to continuous government intrusions upon their rights of political expression and association for almost twenty years prior to their prosecution. Petitioners and their associates diligently and persistently objected to the intrusions and asserted their First Amendment rights.[10] While the lower courts rejected petitioners' objections to intrusions upon their rights, they limited their review to discrete acts and ignored the mosaic of intrusive government conduct.

It would be naive not to recognize that continuous government investigative activity over an extended period into political expression and fundraising is more detrimental in its cumulative effect than when each activity is reviewed separately. *Cf. Pollard v. Roberts*, 283 F.Supp. 248, 258 (E.D. Ark.), *aff'd*, 393 U.S. 14 (1968) (per curiam). Moreover, when this continuous activity against politically active people escalates over time in its disrupting effect, the asserted legitimate governmental interests

10. *See, e.g., LaRouche v. Kelley*, 522 F.Supp. 425 (S.D.N.Y. 1981); *LaRouche Campaign v. F.B.I.*, 106 F.R.D. 500 (D. Mass. 1985).

no longer can be viewed as unrelated to the suppression of free expression. As the Church Committee Report stated, COINTELPRO-type activities may continue under the rubric of "investigation":

> Aggressive investigation continues, and may be even more disruptive than covert action. An anonymous letter (COINTELPRO) can be ignored as the work of a crank; an overt approach by the Bureau ("investigation") is not so easily dismissed. The line between information collection and harassment can be extremely thin.

Church Committee Report, vol. III, at 12-13 (footnote omitted).

In the present case, the government's massive investigative assault on the fundraising conduct of petitioners and their associates, following years of government effort to find other prosecutable offenses committed by these persons, mandates the conclusion that "the alleged governmental interest in reguating [petitioners' fundraising] conduct arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful." *United States v. O'Brien*, 391 U.S. at 382.[11] This conclusion is borne out by statements of government officials. An article in the *New York Times* (App. at A-147-49), entitled "LaRouche Holdings Seen as Imperiled by Inquiry Into Fund Raising," which was published shortly after the government's raid in Leesburg, cites the following statements:

> Federal law-enforcement officials have said their best hope of disrupting Mr. LaRouche's activities may be found in the thousands of documents seized earlier this month in a raid on his headquarters in Virginia.
>
> • • •
>
> A Justice Department official said, however, that evidence gathered in the raid on Mr. LaRouche's offices could eventually cripple the fund-raising campaign.

N.Y. Times, Oct. 29, 1986, at A28. A clearer expression of the government's improper purpose in seeking a prosecution and

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11. This Court has previously recognized that there is protected speech integral to the conduct of soliciting financial support:

> [S]olicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues . . . .

Schaumberg v. Citizens for a Better Environment, 444 U.S. 620, 632 (1980).

confinement—*i.e.*, to silence petitioner LaRouche and his political associates—could hardly be imagined.

The timing of government activity also belies a benign interest in law enforcement. In 1984, grand jury subpoenas were issued five days before the general election (see p. 9, ¶ 24 *supra*). In 1986, the initial Boston indictment and the Leesburg raid occurred less than one month before Election Day (see p. 10, ¶ 31 *supra*). In 1988, the government obtained the Eastern District of Virginia indictment of petitioners approximately three weeks before the general election (see p. 12, ¶ 45 *supra*). In each of those years, petitioner LaRouche or his political associates was a candidate for office. The timing of these activities contravenes the routine practice of the Department of Justice in dealing with criminal investigations which relate to ongoing elections:

> The normal posture of the Federal Government in election fraud matters is to refrain from intervening in an ongoing elective contest in such a way that the investigation is allowed to become a campaign issue. This customarily requires that most, if not all, investigation of a matter await the conclusion of the election involved.

U.S. Department of Justice, Criminal Division, *Federal Prosecution of Election Offenses* 52 (4th ed. October, 1984).

The tainting of the government's allegedly legitimate interest in punishing petitioners for criminal activity with a desire to suppress their free expression and association by investigation and prosecution runs afoul of the First Amendment and invalidates their convictions.

C. The Government's Failure To Utilize The Least Intrusive Alternative To Achieve Its Asserted Interests Invalidates Petitioners' Convictions And Confinement.

First Amendment jurisprudence does not accord wide discretion to the government to abridge protected freedoms in pursuing its legitimate and compelling interests. This Court has rejected government regulation of fundamental personal liberties which was in furtherance of a compelling interest when the means employed to achieve the government's purpose would broadly stifle First Amendment rights. *Shelton v. Tucker,* 364 U.S. 479, 488 (1960). This is a case in which the government, despite available alternative means to accomplish its purpose,

did not minimize its infringement of petitioners' First Amendment rights to political expression and association. Rather, the government imposed the most drastic means available, criminal prosecution, to accomplish its apparent purpose of preventing fraudulent conduct. This Court should invalidate the petitioners' convictions as an unnecessary abridgement of associational freedoms.

Petitioners do not contest that the government has a legitimate interest in preventing fraud. This, however, only begins the analysis when this interest intersects with the realm of political speech. As this Court has noted,

> the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses [including resort to false statement], these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

Cantwell v. Connecticut, 310 U.S. 296, 310 (1940). Accordingly, a balancing of competing interests is required to prevent an unnecessary infringement. "In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." *Id.* at 304. It is incumbent upon the government to demonstrate that no alternative forms of regulation would combat the alleged fraudulent activity without an equally severe infringement on First Amendment rights. *Sherbert v. Verner,* 374 U.S. 398, 407 (1963).

Fundraising in support of political activities falls within the realm of protected speech. *See Schaumberg v. Citizens for a Better Environment,* 444 U.S. 620, 632 (1980); *Thomas v. Collins,* 323 U.S. 516, 540-41 (1945). While vigorous enforcement of antifraud laws to prohibit fundraisers from obtaining money on false pretenses or by making false statements may be a permissible means of regulation, *see Riley v. National Federation of the Blind,* 487 U.S. __, __, 101 L.Ed.2d 669, 692 (1988), more benign and equally narrow options were available.

The government's decision to use criminal investigation and prosecution as the remedy for conduct of petitioners perceived to be wrongful was an escalation of government activity designed to have the maximum negative impact on petitioners' rights of political expression and association. As the court stated in *Pollard v. Roberts, supra:*

> [M]any people doubtless would prefer not to have their political party affiliations and their campaign contributions disclosed publicly or subjected to the possibility of disclosure merely because an officer or agency clothed with investigatory powers may suspect that some members of their party may have violated the law. Disclosure or threat of disclosure well may tend to discourage both membership and contributions thus producing financial and political injury to the party affected.

283 F.Supp. at 258. This is particularly true of a minority party. *Id.; see Buckley v. Valeo,* 424 U.S. at 71. Apart from the obvious political stigma and disabilities imposed on petitioners by their convictions, the government's criminal investigation also had not unforeseeable consequences such as the freezing of needed assets by the campaign depository bank after it was contacted about the grand jury investigation by an FBI agent just five days before the 1984 election (*see* p. 9, ¶ 24 *supra*). While bank seizures of funds or falloffs in contributions or membership may be the result of private decisions, they are the direct, chilling consequence of the government's effort to impose the draconian solution of criminal sanctions. Thus, they are appropriately within the scrutiny of this Court. "The crucial factor is the interplay of governmental and private action, for it is only after the initial exertion of state power . . . that private action takes hold." *NAACP v. Alabama ex rel. Patterson,* 357 U.S. at 463.

In this matter, the government had alternatives available to it to prevent petitioners' perceived wrongful conduct which would not have impinged as severely on their legitimate First Amendment interests. With regard to the petitioners' fundraising activity, one alternative was action by the Federal Election Commission, which is authorized to seek civil penalties and injunctive relief for violations of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.*, the Presidential Election Campaign Fund Act, 26 U.S.C. § 9001 *et seq.*, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031 *et seq.* In fact, the Federal Election Commission conducted a civil investigation of fundraising fraud parallel to that of the grand jury in this very matter. *See Spannaus v. Federal Election Commission,* 641 F.Supp. 1520 (S.D.N.Y. 1986), *aff'd mem.,* 816 F.2d 670 (2d Cir. 1987). With regard to

petitioner LaRouche's tax fraud conspiracy charge, the government had available to it the full range of civil tax proceedings. These alternatives would have provided effective substitutes for criminal prosecution in their remedial effect, while imposing less of an infringement on petitioners' First Amendment rights.

The government's failure to utilize available approaches less intrusive upon petitioners' associative and expressive rights than criminal prosecution fails to meet this Court's rigorous standard of review for government actions adversely affecting First Amendment interests. Petitioners' confinement is not justified under this rigorous standard when it is recognized that:

> there can be a constitutional distinction between the infliction of criminal punishment, on the one hand, and the imposition of milder administrative or disciplinary sanctions, on the other, even though the same First Amendment interest is implicated by each.

Healy v. James, 408 U.S. at 203 (Rehnquist, J., concurring in result).

III. THE CONFINEMENT OF PETITIONERS VIOLATES UNITED STATES TREATY LAW AND THE LAW OF NATIONS PROTECTING THE FREE EXERCISE OF POLITICAL EXPRESSION.

This Court has recognized that the United States "has a vital national interest in complying with international law." *Boos v. Barry*, 485 U.S. ___, ___, 99 L.Ed.2d 333, 346 (1988). In addition to the infringement of First Amendment rights suffered by petitioners here, their confinement also violates rights provided to them under international law provisions which this Court should recognize as an independent basis for habeas corpus relief.

A. Petitioners' Detention Violates Rights Guaranteed Under United States Treaty Law.

Treaties made by the United States are the law of the land. U.S. Const., art. VI, cl. 2. The United Nations Charter ("U.N. Charter"), Oct. 24, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (1969), having been ratified by the United States Senate pursuant to Article II, Section 2, Clause 2, of the Constitution, is law of the United States binding on the United States government. The fundamental human rights to express political opinions freely and to associate with others without fear of

improper governmental interference are guaranteed by Articles 1(3), 55(c) and 56 of the United Nations Charter, as further defined and clarified in Articles 19 and 20 of the Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (App. at A-150-52).

Under the principles first enunciated by this Court in *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 313-14 (1829), the enforceability of the rights conferred by Articles 1(3), 55(c) and 56 of the U.N. Charter in United States courts turns upon whether or not the treaty provisions are self-executing. *See Diggs v. Richardson*, 555 F.2d 848, 851 (D.C. Cir. 1976). Petitioners submit that the provisions in question are self-executing.

The lower courts that have thus far addressed the issue have found the U.N. Charter to be non-self-executing and, consequently, not vesting in citizens of this country enforceable rights. In the leading case of *Sei Fujii v. California*, 97 A.C.A. 154, 217 P.2d 481 (1950), *aff'd*, 38 Cal.2d 718, 242 P.2d 617 (1952), an intermediate appellate court in California struck down a provision of the state's Alien Land Law, on the ground that the racially motivated statute was contrary to the nondiscrimination provisions in Article 55(c) of the U.N. Charter. The California Supreme Court, while affirming the intermediate court's judgment, did so exclusively on the ground that the statute violated the equal protection clause of the Fourteenth Amendment. It specifically rejected the lower court's reliance on the U.N. Charter. 38 Cal.2d at 722-25, 242 P.2d at 621-22. The *Fujii* decision was not appealed to this Court. Petitioners submit that *Fujii* was wrongly decided and the reasoning upon which it was based is obsolete.

An expansive reading of the Charter's human rights clauses, analogous to this Court's application of the "self-executing" due process or equal protection clauses of the Fourteenth Amendment, finds support in the principle enunciated by this Court in *Asakura v. Seattle*, 265 U.S. 332, 342 (1924), that "[t]reaties are to be construed in a broad and liberal spirit and when two constructions are possible, one restrictive of rights which may be claimed under it, and the other favorable to them, the latter is preferred." *Accord, Factor v. Laubenheimer*, 290 U.S. 276, 293-94 (1933); *see also Kolovrat v. Oregon*, 336 U.S. 187, 193 (1961).

Any vagueness which may have characterized Articles 55 and 56 as enacted "has been eliminated in large measure through subsequent adoption by the United Nations of various international human rights instruments that give juridical content to [these articles]." Sarosdy, *Jurisdiction Following Illegal Extraterritorial Seizure: International Human Rights Obligations as an Alternative to Constitutional Stalemate,* 54 Tex. L. Rev. 1464 (1976). Specifically, the Universal Declaration of Human Rights, now widely regarded as containing a universally recognized catalog of the human rights that members of the United Nations deem fundamental, provides an authoritative interpretation of the Charter. *See* Comment, *Self-Executing Treaties and the Human Rights Provisions of the United Nations Charter: A Separation of Powers Problem,* 25 Buffalo L. Rev. 773, 783-84 (1976). Additional definition of the U.N. Charter guarantees is provided by the International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (*entered into force* March 23, 1976) (App. at A-152-53).

The universal acceptance of the freedom of expression and opinion norm contained in Article 55(c), *see* argument III.B., *infra,* is evidence of a consensus supporting a rule of law prohibiting infringement of that freedom, even if other human rights with less universal support cannot be protected solely on the basis of the Charter. *See* I. Brownlie, *Principles of Public International Law* 596-98 (3d ed. 1979).

Whatever human rights norms are generated by the U.N. Charter must be given effect domestically by member states, including the United States, if those states are to fulfill their legal obligations under the treaty. *See Oyama v. California,* 332 U.S. 633, 649-50 (Black, J., and Douglas J., concurring), 673 (Murphy, J., and Rutledge, J., concurring) (1948). President Carter affirmed this position in his March 1977 address to the United Nations, declaring that "[t]he solemn commitments of the United Nations Charter, of the United Nations Universal Declaration for Human Rights, of the Helsinki Accords, and of many other international instruments must be taken just as seriously as commercial or security agreements." [1977] Pub. Papers of the Pres. 449-50. *See also Address by Assistant Secretary of State for Human Rights and Humanitarian Law*

(March 16, 1978) ("The position of the United States is that the provisions of Articles 1, 55 and 56 of the United Nations Charter embody mutual recognition by all parties that every person without distinction is entitled under the Charter to respect for his or her human rights and fundamental freedoms"); *Proclamation No. 4885,* 3 C.F.R. 70 (1982) (President Reagan stating: "We will continue to strive to respect these rights [*i.e.*, the Bill of Rights and the Universal Declaration of Human Rights] fully in our own country and to promote their observance abroad. We could have no greater wish for mankind than that all people come to enjoy these rights"); *Proclamation No. 5357 of July 19, 1985,* 3 C.F.R. 70 (1986) (President Reagan stating: "Our Nation will continue to speak out for the freedom of those denied the benefits of liberty. We will continue to call for the speedy release of those who are unjustly persecuted and falsely imprisoned. . . . [T]he United States of America will demand that the signatories of the United Nations Charter and the Helsinki Accords live up to their obligations and respect the principles and spirit of those international agreements and understandings").[12]

Finally, in *People of Saipan ex rel. Guerrero v. United States Department of Interior,* 502 F.2d 90 (9th Cir. 1974), *cert. denied,* 420 U.S. 1003 (1975), the United States Court of Appeals for the Ninth Circuit set forth the following test for determining whether a treaty is self-executing:

> [t]he extent to which an international agreement establishes affirmative and judicially enforceable obligations without implementing legislation must be determined in each case by reference to many contextual factors: the purposes of the treaty and the objectives of its creators, the existence of domestic procedures and institutions appropriate for direct implementation, the availability and feasibility of alternative enforcement methods, and the immediate and long-range social consequences of self- or non-self-execution.

Id. at 97.

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12. This Court has stated that "[a] construction of a treaty by the political department of the government, while not conclusive upon a court called upon to construe such a treaty in a matter involving personal rights, is nevertheless of much weight." *Charlton v. Kelly,* 229 U.S. 447, 468 (1913). *Accord, Factor v. Laubenheimer,* 290 U.S. at 295.

Saipan suggests that to the extent the United States has acquiesced in certain provisions of international treaties which provide rights coincident with customary international law and with the United States Constitution, such provisions are enforceable domestically. Under the *Saipan* test, Articles 55 and 56 should be found by this Court to be self-executing.

B. Petitioners Are Being Detained In Violation Of The "Law Of Nations."

Petitioners' right to the free exercise of political expression without improper governmental interference and imprisonment is also protected by customary international law or the "law of nations," a part of the law of the United States, which the Court is bound to ascertain and administer. *The Paquete Habana,* 175 U.S. 677, 700 (1900); *The Nereide,* 13 U.S. (9 Cranch) 388, 422-23 (1815). What the law of nations on a subject is "may be ascertained by consulting the works of jurists, writing professedly on public laws; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law." *United States v. Smith,* 18 U.S. (5 Wheat.) 153, 160-61 (1820).

Most nations in their constitutions now prohibit discrimination and/or persecution on the basis of political beliefs. *See* M. McDougal, H. Lasswell, Lung-Chu Chen, *Human Rights and World Public Order* 705-08 (1980) [hereinafter M. McDougal]. Further, as noted earlier, the right to free expression is enumerated in the U.N. Charter, a treaty ratified by the United States. It is also included in Articles 5 and 16 of the Organization of American States Charter, April 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3 (*entered into force* Dec. 13, 1951) and *amended* by the Protocol of Buenos Aires, Feb. 27, 1967, T.I.A.S. No. 6847, O.A.S.T. No. 1-A, O.A.S.O.R., O.E.A./Ser. A/2, add. 2 (*entered into force* Feb. 27, 1970), another ratified treaty of the United States, as that treaty is elaborated upon by Articles 4 and 22 of the American Declaration of the Rights and Duties of Man, May 2, 1948, O.A.S. Off. Rec. OEA/Ser. L/V/II 23, doc. 21, rev. 2.

In addition to these treaty provisions, the right to free political expression is also set forth in the following international human rights instruments: the Universal Declaration of Human

Rights,[13] at Articles 19, 28, 29 and 30; the International Covenant on Civil and Political Rights, at Article 19; the American Convention on Human Rights, Nov. 22, 1969, O.A.S. T.S. No. 36 at 2, O.A.S. Off. Rec. OEA/Ser. L/V/II 23 doc. 21, rev. 2 (*entered into force* July 18, 1978), at Article 13; the European Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1953, 213 U.N.T.S. 221, at Articles 10, 13 and 14; the African Charter on Human and Peoples' Rights, June 27, 1981, O.A.U. Dec. CAB/LEG/67/3 rev. 5, at Articles 2 and 9; and the Final Act of the Conference on Security and Cooperation in Europe ("Helsinki Accords"),[14] Helsinki, August, 1975, *reprinted in* 73 U.S. State Dept. Bull. 323 (1975), at Principles 7 and 10. The repeated inclusion of provisions setting forth this right in the above-cited instruments demonstrates that it is universally recognized and accepted by states that freedom *of* political expression and freedom *from* governmental suppression is a customary principle of international law that no civilized nation may deny its citizens.[15] (The relevant portions of the instruments cited above are set forth in the Appendix at A-150-58.) This principle of customary international law is enforceable by petitioners in the courts of the United States against the United States government. *Filartiga v. Pena-Irala,*

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13. The Universal Declaration is an authoritative interpretation of the human rights provisions of the United Nations Charter and its precepts have become recognized as established customary law, having the attributes of *jus cogens. See Filartiga v. Pena-Irala,* 630 F.2d 876, 883 (2d Cir. 1980); M. McDougal at 274.

14. *See Proclamation No. 5334 of April 30, 1985,* 3 C.F.R. 46 (1986) (President Reagan stating: "Human rights and fundamental freedoms lie at the heart of the commitments made in the Helsinki Accords of 1975 and in the Madrid Concluding Document of 1983. These documents set forth a clear code of conduct, not only for relations among sovereign states, but also for relations between states and their citizens. . . . Let us as Americans look once again to our commitment to implement fully the human rights and humanitarian provisions of the Helsinki Accords, because these freedoms are fundamental to our way of life."

15. At a minimum, the United States government has explicitly recognized that the principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights reflect customary law. *See* Memorial of the Government of the United States of America at 71, *Case Concerning United States Diplomatic and Consular Staff in Teheran (U.S. v. Iran,* 1980 I.C.J. 3), I.C.J. Pleadings 1 (1980); *see also Memorandum for the United States as Amicus Curiae* at 3, *Filartiga v. Pena-Irala,* 630 F.2d 876 (2d Cir. 1980).

630 F.2d at 884-85; *Fernandez v. Wilkinson*, 505 F.Supp. 787 (D. Kan. 1980), *aff'd on other grounds sub nom. Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382 (10th Cir. 1981).

IV. PETITIONERS' FIFTH AMENDMENT RIGHT TO DUE PROCESS IS DENIED BY THEIR CONFINEMENT IN VIOLATION OF CUSTOMARY INTERNATIONAL LAW GUARANTEEING THEIR RIGHT OF POLITICAL EXPRESSION FREE FROM UNDUE GOVERNMENTAL INTERFERENCE.

The Fifth Amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. By its substantive component, this constitutional provision bars certain government actions "regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). It thereby serves to prevent governmental power from being used for purposes of oppression. *Id.; Murray's Lessee v. Hoboken Land and Improvement Co.*, 59 U.S. (18 How.) 272, 277 (1856).

Due process of law is "a summarized constitutional guarantee of respect for those personal immunities which . . . are 'implicit in the concept of ordered liberty.' *Palko v. Connecticut*,[16] 302 U.S. 319, 325." *Rochin v. California*, 342 U.S. 165, 169 (1952). The protection has no fixed technical content. In *Rochin v. California*, this Court noted:

> In dealing not with the machinery of government but with human rights, the absence of formal exactitude, or want of fixity of meaning, is not an unusual or even regrettable attribute of constitutional provisions.

342 U.S. at 169.

The principles of customary international law can provide content to the notion of fairness inherent in the concept of due process. *See Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382, 1388 (10th Cir. 1981). These principles, discussed *supra*, establish that human beings have a right of expression which should be free from undue governmental interference. The government's prosecution and confinement of petitioners, tainted as it was by an interest in suppressing their right to free expression,

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16. In *Palko v. Connecticut*, 302 U.S. 319, 326-27 (1937), Justice Cardozo wrote for this Court that freedom of thought and speech "is the matrix, the indispensable condition, of nearly every other form of freedom."

see argument II.B., *supra*, violates this international norm and thereby constitutes a form of oppression. When this oppressive government conduct results in an infringement of liberty, as petitioners' imprisonment has, it violates the constitutional guarantee of due process of the Fifth Amendment. This constitutional violation mandates the granting of the requested writs of habeas corpus and the release of petitioners from custody.

WHEREFORE, your petitioners pray:

A) That, under 28 U.S.C. § 2243, this Court issue an order that the respondents show cause why this Joint Petition should not be granted and the petitioners discharged.

B) That this Court set out in the order a return day of three days.

C) That this Court set the matter down for hearing within five days after the return.

D) That this Court order respondents to release the petitioners forthwith pending the final determination of this Joint Petition or in the alternative that each petitioner be brought before the Court and allowed to sign his or her own recognizance to abide by such orders as this Court may enter and be released on that recognizance.

E) That this Court hear and determine the matter, and upon final hearing issue Writs of Habeas Corpus and an order directing the respondents to discharge the petitioners from their custody.

Respectfully submitted,

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